

## Appendix 1 – Control of Pollution (Oil Storage) (Wales) Regulations Consultation. Closing date 24 September 2015

### Specific Issues for Consultation

#### Consultation

#### Response Form

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**Question 1:** Do you consider that the proposed Regulations will provide improved protection for the water environment?

**YES:** Natural Resources Wales supports the Welsh Government's proposals for new controls on the storage of oil in Wales and the introduction of regulations that set minimum standards for oil storage facilities. We believe this will contribute to a reduction in the number of oil-related water pollution incidents.

We believe that there are aspects of the proposed regulations which could be strengthened and/or more prescriptive measures specified, so as to further improve the protection of the water environment.

Pre-consultation discussions have already indicated that it may be more difficult or even impracticable to enforce some of the additional requirements suggested (see response to Question 6) and this may be why they are not already included in the proposals. It is also acknowledged that it is desirable for the Regulations to be succinct and not too verbose. None the less, the comments are recorded here for your consideration.

**Question 2:** *Are there any activities other than those specified in draft regulation 4 which should be exempted from the Regulations?*

**No**

#### Comments:

Given that the EA/EAW National Incident Recording System statistics indicate that a high number of incidents and spills occur at domestic oil storage tanks, we feel that a much greater reduction in spillages could be achieved if there were no exemptions. For example, causes of incident data indicate that there are more fuel oil incidents from domestic dwellings than the agricultural

sector. It is possible, however, that the more remote, rural location of farms may mean that more oil spill incidents go unreported.

If existing domestic installations are to be exempt, we propose that WG and NRW work on jointly promoting the UK Oil Care Campaign advice, as detailed in the associated website; [www.oilcare.org.uk](http://www.oilcare.org.uk) .

**Question 3:** *Are the timescales for the provision of secondary containment for existing tanks reasonable?*

**Yes.** In general, however, see below:

As similar regulations have been in force under SSAFO since 1991, four years seems reasonable for the agriculture sector where tanks are not located in high risk areas, although 2 years for the latter may be too long. To provide increased protection for sensitive areas, it would be preferable if there was no stipulated timescale for tanks located within 10m of a watercourse or within 50m of a spring, well or borehole and that relocation or replacement should be as directed by the Regulator (NRW). Otherwise, it may imply that we are accepting and allowing tanks to be located in these sensitive areas, albeit for 2 years, and this is contrary to our historic approach under SSAFO.

The Regulations provide “Transitional Provisions” e.g. requiring improvements to existing structures either within 2 or 4 years. To enforce this effectively could require regulators to know where all the existing commercial storage facilities are and log and monitor the timing of the improvements accordingly. To avoid such an onerous undertaking, we would need a policy/strategy agreement on how desired outcomes are to be achieved.

**Question 4:** *Have you any comments to make on the sectors to which the Regulations will apply?*

**Yes**

Storage of Oil: 3 c ii Oil Distribution Depots are mentioned here as intended to be exempt. Although there may be existing UK “Guidance” and “Codes of Practices” on their construction and design, relying on adherence to these would not be as effective as that sector having to abide by Regulations.

Regarding the proposed changes to the 1991 (revised 2010) The Water Resource (Control of Pollution) (Silage, Slurry and Agricultural Fuel Oil (Wales) Regulations (SSAFO): Whilst we generally support this, particularly the intention to end the current exemption for agricultural fuel oil facilities pre-dating 1991, we would make the following observations:

- **Comment:** Although farmers will have, depending upon the proximity of their fuel storage to watercourses, springs wells or boreholes, up to either 2 or 4 years to comply with the new requirements it is important that they are effectively informed of the forthcoming changes at a very early stage. For example: that the threshold for bunding is reducing from 1500 litres to

200 litres and that the exemption for facilities in existence before 1991 is being removed.

- **Concern:** The SSAFO Regulations required fuel tanks to be located 10m away from watercourses that fuel oil could enter if it escaped, but this isn't stipulated in the proposed Regulations. This increases the risks of pollution to controlled waters. There are no location restrictions to protect wells, springs, boreholes or private water supplies, thus increasing the risk to the environment. In addition, the transitional provisions effectively allow the tanks to be located within these areas for 2 years. This would undermine our previous enforcement work on farms. It could also infer that locating tanks in these sensitive areas is now acceptable.
- Given the changes to SSAFO, there is no related reference to the need to notify NRW in writing at least 14 days before a new, enlarged or reconstructed facility is used (i.e. oil storage in this case). Are there plans to change NRW notification to 14 days before construction (in line with Scottish requirements)? This would enable NRW to work with the farmer and constructor to ensure that structures are designed and built to British Standard 5502, constructed with a life of at least 20 years and be properly located in respect to risk to water.
- In the Welsh Government Consultation review of The Water Resources (Control of Pollution) (Silage, Slurry and Agricultural Fuel Oil) Wales Regulations 2010, issued 26<sup>th</sup> August 2015, WG reiterated the commitment they made to make changes to the notice periods required before the installations of structures. This was stated in WG's response to the 2012 Review of Nitrate Vulnerable Zones in Wales. NRW expected that this commitment would be included, however, these proposed Regulations do not include it.

**Question 5:** *Do you consider the enforcement provisions are reasonable and effective?*

**Yes.** Although, given the proposed transitional provisions and the changes to SSAFO, NRW notes that for high risk facilities it will need to use its other works notice powers under The Anti-Pollution Works Regulations 1999. Using these powers can be relatively more complex and time consuming than the current process under SSAFO for improving farm storage facilities.

The proposed Regulations will add to NRW's enforcement responsibilities. It is likely that Local Authorities' Building Regulation and Planning teams could aid in significantly lessening the potential regulation workload by ensuring, via their duties, that new or replacement oil storage structures are constructed strictly in accordance with the new Regulations. NRW would be pleased if Welsh Government could ensure that Local Authorities are given a clear steer on this matter.

**Question 6:** *Have you any comments on particular aspects of the proposed Regulations or the regime in general?*

**Yes**

NRW is variously referred to as the Natural Resources Body for Wales, Natural Resources for Wales and Natural Resources Wales, please use the latter throughout.

It is NRW's experience that many people buy double skinned oil storage tanks in the mistaken belief that they are the same as an "Integrally Bunded Tank System" (you acknowledge this in your Guidance Notes). Although Section 4 (3) stipulates the requirements for the location of a tank's ancillary equipment, given the prevalence of the issue, it might be useful to make the distinction clear in the Regulations. This could perhaps be achieved under Section 2: Interpretation e.g. *"Integrally Bunded Tank System" means an oil storage system where valves, sight glasses or any other ancillary equipment that could cause a leak are located within the secondary containment system. Many commonly available double skinned tanks do not conform to this requirement*".

The Guidance Notes on the Regulations recommend that, where practicable, storage structures should be located at least 50 metres away from a well or borehole. Where mentioned, we suggest this is reworded to state "at least 50 metres away from any spring, well or borehole". In addition, we suggest that consideration is given to, unless wholly impracticable, location of structures being at least 50m away from groundwater sources for human consumption or dairy/food use, and Source Protection Zones (a zone defined by a 50-day travel time for groundwater to reach a groundwater abstraction point that is used to supply water for domestic or food production purposes). For example; the transitional provisions (Section 7(a)(ii) of the draft regulations) reference tanks situated less than 50m away from a well or borehole. So as to be consistent with the wording in the Environmental Permitting Regulations, it would be useful if this was clarified to reference "points of abstraction from underground strata" etc.

The Oil Storage Regulations in place for England cover domestic oil tanks over 3500 L capacity. Whereas such large volume tanks may well be considered rare in Wales, we are unsure if they have they been deliberately omitted from the Welsh Regulations?.

Regulation 3a states that the regulations don't apply to containers of a capacity of 200 litres and less; stored subject to an environmental permit. This could be read as if any oil is not subject to an environmental permit, then all oil, regardless of storage capacity, requires bunding. Maybe the reference to an environmental permit should be a different subsection in itself?.

Regulation 3 (c ) (i) clarity could be improved if you were to remove "oil" before "the container".

For Section 5(3) of the regulations pertaining to fill, draw off or supply pipes and where these are located above ground; it is felt that " - must be properly supported" is not specific enough and should be expanded to ensure that installers locate the pipes away from risks of collision and affix pipe supports to solid, fixed structures.

Large spillages can occur where the filling point is outside of the bund. Regulation 4. (4) (Not clear whether this only refers to “mobile” tanks and drums?) stipulates that a drip tray is used under the filling point. As not all oil supply companies have adopted the “Driver Passport” system and training that is designed to reduce incidents during supply, as per Regulation 5 (4), it would be good to stipulate that the filling point must always be supervised where it is outside the bund and not visible from the delivery mechanism.

Section 5. (3) (b) (iii) and (v) on leak detection seem to almost contradict each other. If leakage detection monitors are not mandatory, annual checks on all pipes would not be unreasonable and would be much more environmentally protective than the 5 and 10 years mentioned

Regarding the management of water within the bunds, roofing facilities, inspection intervals, removal and disposal of waste etc., rather than rely on users to seek appropriate advice, or provide a web-link that could break or go out of date, could something quite detailed be provided within the Regulations?

**Question 7:** *We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them:*

Please enter here:

Guidance note (Appendix 4): There is no mention within it of the need for building regulations approval for storage tanks and to meet the requirements of Approved Document J. Will Building Regulations Approved Document J be revised in Wales to reflect this new piece of legislation as it is different to that implemented in England?

Paragraph 9 (exemptions) says ‘storage of oil on premises used wholly or mainly as a single private dwelling’. Is the word ‘single’ required? It is likely to confuse users and possibly enforcement in situations where more than one private dwelling shares a tank. The draft regulations don’t appear to contain a distinction and it is unclear if the exemption only applies to a tank supplying a single private dwelling, or any tank supplying private dwellings regardless of the number of properties connected to it?

Appendix 3 (Regulatory Impact Assessment) states on page 4 that ‘*new storage facilities will have to comply within six months of the regulations coming into operation*’. As “new storage” is stipulated, we are unsure why compliance is not required immediately?

Responses to consultations may be made public – on the internet or in a report. If you would prefer your response to be kept confidential, please tick here:

